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09/444,120	11/19/1999	YOSHIHIKO SHIODA	019441.023	8235

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EXAMINER

GORDON, RAEANN

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 31

Application Number: 09/444,120
Filing Date: November 19, 1999
Appellant(s): SHIODA, YOSHIHIKO

James D. Wright
For Appellant

MAILED
JAN 13 2004
GROUP 3700

EXAMINER'S ANSWER

This is in response to the appeal brief filed 10-21-03.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1, 18-20, and 23 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 18, and 23 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Davis (3,168,312). Davis discloses a frame comprising a base, a vertical stand, a horizontal arm attached to the stand, a flexible cord attached to the horizontal arm, and a ball attached to the flexible cord adjacent the ground (see fig 1). Davis further discloses the device utilized for balls of differing weights and densities and may be struck with various types of striking implements (col. 2, lines 1-5). Davis gives examples of softballs and baseballs as the type of larger ball that can be accommodated by the device (col 1, lines 65-70).

Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis. Davis discloses the invention as shown above but fails to include the height of the frame. However, Davis discloses the device may be used for a variety of sports (col. 2, lines 30-32). Davis gives examples of using softballs and baseballs. It is obvious the height of the frame would fall between 1 ½ and 5 feet to accommodate the heights associated with sports such as softball and baseball.

(11) Response to Argument

Appellant's argues the prior art of record, Davis, does not disclose each and every element recited in claims 1, 18, and 23. The Examiner disagrees. The present invention claims a golf device comprising 1) a base for supporting the device, 2) a frame member extending upward from the base, 3) an outwardly extending mounting arm, and

4) an object suspended from the mounting arm. The object must be at the least the size and mass of a softball. Davis discloses a frame comprising a base, a vertical stand, a horizontal arm attached to the stand, a flexible cord attached to the horizontal arm, and a ball attached to the flexible cord adjacent the ground (see fig 1). Davis further discloses the device is utilized for balls of differing weights and densities and may be struck with various types of striking implements (col. 2, lines 1-5). Davis gives examples of softballs, baseballs, and footballs as the types of larger ball that can be accommodated by the device (col. 1, lines 65-70: col. 4, lines 46-49). Clearly Davis discloses the structural limitations. Appellant further states **“Applicant agrees the apparatus disclosed by Davis may be used with a variety of ball types, including tennis ball, baseballs and softballs. Significantly, however, Davis fails to disclose the use of a striking implement, designed for use in one sport, to strike balls from a different sport...”** (pg. 5, lines 5-7). Appellant is correct, Davis does not disclose this feature, however, appellant’s argument is not understood because the striking implement is not claimed as part of the present invention and is therefore not a structural limitation. Claim 1, line 5 recites “...to be struck by a golf clubhead...”. The golf clubhead or striking implement is introduced in the claim but is not claimed as a structural limitation. With respect to claim 18, Davis discloses a flexible cord suspended from the arm (see figure 1).

Next, Appellant states “claim 1 recites “an object swingably suspended from said mounting arm with at least a portion of said object adjacent the floor or ground in a position to be struck by a golf clubhead during a normal swing of a golf club”. Similarly,

claim 23 recites "an object...extending between said mounting arm and said base in position for striking by a golf clubhead during a normal golf swing and stopping the golf clubhead in an impact position." Davis clearly discloses this limitation in column 4, lines 35-45. Davis discloses the ball is in a position where it will be struck by the implement to be used in practicing a certain sport. Davis cites baseball and golf as examples and states the ball is positioned between the housing (appellant's mounting arm) and the ground or the ball is positioned to be struck by a driving wood or pitching iron. In regards to this particular section of Davis, Appellant argues Davis does not teach any apparatus that includes any object other than a golf ball is suspended with at least a portion of said object adjacent the floor or ground in position to be struck by a golf clubhead during a normal swing of a golf clubhead." Davis meets applicant's structural limitation with respect to the location of the object. According to the claims 1 and 23 the object is suspended or extends from the mounting arm and is adjacent the ground. See figure 1 of Davis where the ball is adjacent to the ground.

With respect to the mass of the object, the claims limit the object to be at least the size and mass of a softball. Appellant states on page 5, lines 5-6 of the brief "Applicant agrees that the apparatus disclosed by Davis may be used with a variety of ball types, including tennis balls, baseballs and **softballs**. (Col. 1. lines 63-71)". Contrary to this statement appellant states Davis does not disclose a "golf practice and exercise device" that includes, as part of thereof, an object having "a mass at least that of a softball"....". Appellant's position is not understood. However, as appellant admits on page 5 Davis does disclose the use of a softball, which meets the limitation of "a

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mass at least the size of a softball". Davis also discloses a football may be used with the device, which also meets the limitation (col. 4, lines 46-48).

Appellant further argues claim 23 requires an object "secured to and extending between said mounting arm and base." and states Davis does not disclose an object or ball secured to the mounting arm and to the base. Appellant is correct in stating Davis does not disclose a ball or object secured to the base. However, as currently written claim 23, does not require the object to be secured to base. The claim limits the location of the object between the mounting arm and base. The claim also requires the object to be secured to the mounting arm but not the base.

Claims 19 and 20 are rejected under 35 USC 103(a) in view of Davis. Claim 19 requires the mounting arm to be 1.5 to 5 feet above the ground while claim 20 requires the mounting arm to be 3 feet above the ground. Davis discloses the device may be used for a variety of sports (col. 2, lines 30-32) and gives examples of using softballs and baseballs. It is obvious the height of the frame would fall between 1 ½ and 5 feet to accommodate different heights associated with sports such as softball and baseball. Appellant argues the claimed maximum height of 5 feet would be too low a point from which to suspend a softball for many taller batters. Although it is possible the apparatus may not accommodate tall batters at a position of 5 feet the apparatus will accommodate shorter or average height batters at this position.

In conclusion it is submitted that Davis clearly discloses the apparatus claimed by Appellant. With respect to claims 1 and 23, Davis discloses a frame comprising a base, a vertical stand, a horizontal arm attached to the stand, a flexible cord attached to the

horizontal arm, and a ball attached to the flexible cord adjacent the ground (see fig 1). Davis further discloses the device is utilized for balls of differing weights and densities and may be struck with various types of striking implements (col. 2, lines 1-5). Davis gives examples of softballs and baseballs as the type of larger ball that can be accommodated by the device (col. 1, lines 65-70). As previously mentioned claim 23 does not require the objected to be secured to the base. Regarding claim 18, Davis discloses a flexible cord suspended from the arm (see figure 1). Regarding claims 19 and 20, Davis discloses the device may be used for a variety of sports (col. 2, lines 30-32). Davis gives examples of using softballs and baseballs. It is obvious the height of the frame would fall between 1 ½ and 5 feet to accommodate different heights associated with sports such as softball and baseball.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



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Examiner
Art Unit 3711

rg
January 12, 2004

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